

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 421

(By Senators Trump, Carmichael, Blair and Gaunch)

[Originating in the Committee on the Judiciary;
reported February 13, 2015.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-27, relating generally to treatment of punitive damages; providing for limitations on punitive damages; providing for when punitive damages may be awarded; providing for a bifurcated trial, upon request, for civil actions involving punitive damages; providing that one third of all punitive damages awards in excess of \$500,000 made in the state be tendered to the State Treasurer; providing that those remittances, less a percentage to the circuit clerk for processing, be deposited into the Revenue Shortfall

Reserve Fund; and providing that those funds be administered according to section twenty, article two, chapter eleven-b of this code.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-27, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-27. Limitations on punitive damages.

1 (a) An award of punitive damages may only occur in a
2 civil action against a defendant if a plaintiff establishes by
3 clear and convincing evidence that the damages suffered
4 were the result of the conduct that was carried out by the
5 defendant with actual malice toward the plaintiff or a
6 conscious, reckless and outrageous indifference to the health,
7 safety and welfare of others.

8 (b) Any civil action tried before a jury involving punitive
9 damages shall, upon request of any defendant, be conducted in
10 a bifurcated trial in accordance with the following guidelines:

11 (1) In the first stage of a bifurcated trial, the jury shall
12 determine liability for compensatory damages and the amount
13 of compensatory damages, if any.

14 (2) If the jury finds during the first stage of a bifurcated
15 trial that a defendant is liable for compensatory damages,
16 then the court shall determine whether sufficient evidence
17 exists to proceed with a consideration of punitive damages.

18 (3) If the court finds that sufficient evidence exists to
19 proceed with a consideration of punitive damages, the same
20 jury shall determine if a defendant is liable for punitive
21 damages in the second stage of a bifurcated trial and may
22 award such damages.

23 (4) If the jury returns an award for punitive damages that
24 exceeds the amounts allowed under subsection (c) of this
25 section, the court shall reduce any such award to comply with
26 the limitations set forth therein.

27 (c) The amount of punitive damages that may be awarded
28 in a civil action may not exceed the greater of three times the
29 amount of compensatory damages or \$500,000, whichever is
30 greater.

31 (d) The Legislature hereby finds that:

32 (1) Punitive damages are a form of damages awarded to
33 a plaintiff in a civil action which are not compensatory in
34 nature and which are intended solely for the punishment of
35 defendants found liable for certain bad acts.

36 (2) Punitive damages are a powerful incentive for certain
37 plaintiffs, and plaintiffs' counsel, to institute and prosecute
38 civil actions against certain defendants, resulting in a
39 valuable check on the behavior of bad actors in the
40 marketplace.

41 (3) Punitive damages, by their nature as
42 noncompensatory damages, result in a windfall to plaintiffs,
43 and their counsel, which may be better applied to contribute
44 to the fiscal stability of the state.

45 (e) For any award of punitive damages in excess of
46 \$500,000 in civil actions adjudicated in the courts of this
47 state, and in the courts of the United States of America sitting
48 in the state, one third of the amount in excess of \$500,000
49 shall be paid into the Revenue Shortfall Reserve Fund and

50 administered therefrom as provided in section twenty, article
 51 two, chapter eleven-b of this code. Nothing in this section
 52 shall be construed to give the Revenue Shortfall Reserve
 53 Fund any interest in the claim for punitive damages or in the
 54 litigation itself at any time prior to payment becoming due
 55 upon the entry of a judgment.

56 (f) For civil actions adjudicated in the courts of the state
 57 where an award of punitive damages exceeded \$500,000, the
 58 defendant(s) shall pay the first \$500,000 of that punitive
 59 damages award directly to the plaintiff in accordance with
 60 any court order. Any amount in excess of the \$500,000
 61 awarded shall be paid to the circuit clerk of the county in
 62 which the civil action was maintained. The circuit clerk shall
 63 pay to the plaintiff in the civil action, or his or her designee,
 64 a sum equal to two thirds of the payment made to the circuit
 65 clerk by the defendant(s), after the deduction of any amounts
 66 due and owing the court from the plaintiff. The circuit clerk
 67 shall remit the balance of the payment, less one percent
 68 which shall be retained by the circuit clerk to cover

69 administrative and other costs associated with the obligations
70 imposed under this section, made by the defendant(s) to the
71 State Treasurer, and a statement showing any deductions
72 made therefrom by the circuit clerk, together with a certified
73 copy of the court order awarding punitive damages.

74 (g) For civil actions adjudicated in the courts of the
75 United States of America sitting in the state where an award
76 of punitive damages exceeded \$500,000, a party to such
77 action shall file, upon a form prescribed by the Secretary of
78 Tax and Revenue, an informational return stating the amount
79 of punitive damages in excess of \$500,000 awarded to a
80 plaintiff, the filing of which will be accompanied by a
81 certified copy of the court order making such award. A copy
82 of this return, together with a copy of the court order, shall
83 also be filed with the circuit clerk of the county of residence
84 of the defendant(s), if a natural person, or the county of the
85 principal place of business, if a domestic entity. The
86 defendant(s) shall pay the first \$500,000 of that punitive
87 damages award directly to the plaintiff in accordance with

88 any court order. Any amount in excess of the \$500,000
89 awarded shall be paid to the circuit clerk of the county of
90 residence of the defendant(s), if a natural person, or the
91 county of the principal place of business, if a domestic entity.
92 The circuit clerk shall pay to the plaintiff in the civil action,
93 or his or her designee, a sum equal to two thirds of the
94 payment made to the circuit clerk by the defendant(s), after
95 the deduction of any amounts due and owing the court from
96 the plaintiff. The circuit clerk shall remit the balance of the
97 payment, less one percent which shall be retained by the
98 circuit clerk to cover administrative and other costs
99 associated with the obligations imposed under this
100 section, made by the defendant(s) to the State Treasurer, and
101 a statement showing any deductions made therefrom by the
102 circuit clerk, together with a certified copy of the court order
103 awarding punitive damages.

104 (h) The State Treasurer shall deposit any amounts
105 collected or received under this section into the Revenue
106 Shortfall Reserve Fund and any such deposits shall be

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107 administered pursuant to section twenty, article two, chapter

108 eleven-b of this code.

(NOTE: §55-7-27 is new; therefore, strike-throughs and underscoring have been omitted.)